

Montana Water Court  
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IN THE WATER COURT OF THE STATE OF MONTANA  
YELLOWSTONE DIVISION  
SWEET GRASS - BASIN (43BV)

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CLAIMANTS: Borchardt Holdings LLC; McLeods Flying  
Bull Bison Ranch LLC

CASE 43BV-0076-R-2023  
43BV 27177-00

**CLOSING ORDER**

The Water Court included claim 43BV 27177-00 in the Preliminary Decree for the Sweet Grass Creek Basin (Basin 43BV) as a filed right to use water from Sweet Grass Creek to irrigate up to 29.00 acres with a June 15, 1901 priority date. The claim is co-owned by McLeods Flying Bull Bison Ranch LLC and Borchardt Holdings LLC (collectively, "Claimants"). The preliminary decree abstract contains two issue remarks:

ALTHOUGH NOT OBJECTED TO, THE FLOW RATE HAS BEEN REDUCED AS SPECIFIED BY THE STIPULATION FILED BY THE PARTIES ON APRIL 13, 1987. THIS MAY BE HEARD AT THE PRELIMINARY DECREE STAGE.

THE PRIORITY DATE MAY BE QUESTIONABLE. THIS CLAIM IS FOR A FILED APPROPRIATION ON SWEET GRASS CREEK WITH A PRIORITY DATE PREDATING CASE NO. 342, SWEET GRASS COUNTY.

Appearing party J Bar L Ranches LLC (“J Bar L”) filed a “Position Statement and Conditional Withdrawal” (“Statement”) on May 30, 2023. J Bar L’s Statement explains why a stipulation filed with the Water Court on April 3, 1986 in Case 43BV-15 sufficiently addressed the issue of the accuracy of the June 15, 1901 priority date for claim 43BV 27177-00 in light of the district court decree in *Harrison v. Van Cleave*, Case No. 342 (Mont. Sixth Jud. Dist., Apr. 6, 1906). J Bar L withdrew its appearance on the condition that the decreed maximum acreage not exceed 29.00 acres. The condition is reasonable and is satisfied by this Order. The Court accepts J Bar L’s withdrawal. As there are no objections, the issue remarks are resolved and should be removed from the abstract.

As part of its Statement, J Bar L notified the Court that a discrepancy seems to exist between the decreed number of acres irrigated (29.00 acres), and the way the decreed acreage is described for the place of use. The preliminary decree abstract describes the place of use as:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	4.50		SWSWSW	22	2N	16E	SWEET GRASS
2	3.40		NWNWSE	22	2N	16E	SWEET GRASS
3	10.60		NWNWSE	22	2N	16E	SWEET GRASS
4	4.70		NWNWSE	22	2N	16E	SWEET GRASS
5	<u>5.80</u>		NWNWSE	22	2N	16E	SWEET GRASS
Total	29.00						

The quarter section references for place of use identification numbers 2, 3, 4, and 5 all are described to the nearest 10 acre quarter-quarter-quarter section: the NWNWSE. The total number of acres described for this 10-acre quarter-quarter-quarter section sums to 24.50 acres. This appears to be in error because the maximum size of the referenced aliquot part of the section is approximately 10 acres. Nothing in the claim file resolves the error.

The Court called this issue in on the Court’s own motion because no one objected to this issue, and the Department of Natural Resources and Conservation did not flag it with an issue remark. The Court provided the claimants the opportunity to clarify the

legal description with a July 7, 2023 deadline. The Court's order said if nothing was filed, the place of use acreage for the NWNWSE would be reduced to 10 acres. Nothing was filed so the Court enters this Order modifying the place of use and maximum acres.

### **ORDER**

THEREFORE, it is ORDERED that (1) the issue remarks are removed from claim 43BV 27177-00; (2) the place of use and maximum acres elements are modified consistent with this Order; (3) and the appearance of J Bar L is DISMISSED.

A post-decree abstract of the water right claim is included with this order confirming the modifications to the abstract have been made in the State's centralized water rights record system.

### **ELECTRONICALLY SIGNED AND DATED BELOW**

#### **Service Via USPS Mail:**

Borchardt Holdings LLC  
1167 Lower Sweet Grass Rd  
Big Timber, MT 59011-7783  
970-390-0627 H  
b.borchardt51@gmail.com

McLeods Flying Bull Bison Ranch LLC  
1228 Lower Sweet Grass Road  
Big Timber, MT 59011

**POST DECREE  
ABSTRACT OF WATER RIGHT CLAIM  
SWEET GRASS CREEK  
BASIN 43BV**

**Water Right Number:** 43BV 27177-00 STATEMENT OF CLAIM

**Version:** 4 -- POST DECREE

**Status:** ACTIVE

**Owners:** MCLEODS FLYING BULL BISON RANCH LLC  
1228 LOWER SWEET GRASS ROAD  
BIG TIMBER, MT 59011

BORCHARDT HOLDINGS LLC  
1167 LOWER SWEET GRASS RD  
BIG TIMBER, MT 59011 7783

**\*Priority Date:** JUNE 15, 1901

**Type of Historical Right:** FILED

**Purpose (use):** IRRIGATION

**Irrigation Type:** FURROW/FLOOD

**\*Flow Rate:** 1.00 CFS

**Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

**Climatic Area:** 3 - MODERATE

**Maximum Acres:** 14.50

**Source Name:** SWEET GRASS CREEK

**Source Type:** SURFACE WATER

**\*Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWNWSW	22	2N	16E	SWEET GRASS

**Period of Diversion:** APRIL 1 TO AUGUST 31

**Diversion Means:** HEADGATE

**Ditch Name:** MESSING-RIPLEY DITCH

THE POINT OF DIVERSION IS LOCATED APPROXIMATELY ON THE WESTERN SECTION LINE OF SECTION 22 AT THE INTERSECTION OF THE NWSW AND SWSW OF SECTION 22.

**Period of Use:** APRIL 1 TO AUGUST 31

**Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	4.50		SWSWSW	22	2N	16E	SWEET GRASS
2	10.00		NWNWSE	27	2N	16E	SWEET GRASS
<b>Total:</b>	14.50						